

IN THE HIGH COURT OF KARNATAKA : AT BANGALORE

DATED : 28TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR.JUSTICE K.H.N.KURANGA

C.R.P. NO.1135 OF 1998

Between:

Mahammadali,
S/o Budensab Gadwale,
Age: Major, Occ: Business,
R/o Veerapur Oni Hubli,
District: Dharwad. Petitioner

(By Sri Lokesh Malavalli,
Advocate for petitioner)

And:

Imamasab,
S/o Mangalsab Ariyavar,
Age: Major, Occ: Coolie,
R/o Veerapur Oni,
Hubli, Dist: Dharwad. Respondents

This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the order dated 7-3-1998 passed in O.S. No.501 of 94 on the file of the III Addl. Civil Judge, Jr.Dn., Hubli dismissing I.A.No.VII filed under Order 26 Rule 9 for seeking appointment of Commissioner.

This petition is coming on for admission, this day, the Court made the following:-

ORDER

ORDER

The petitioner is the defendant in the suit O.S.No.501 of 1994 on the file of the III Additional Civil Judge (Jr. Dn.), Hubli. He has, in this petition, challenged the order dated 7th March 1998 passed by the learned Civil Judge dismissing the application I.A. No.7 filed by the petitioner for appointment of the Court Commissioner for local inspection of the properties of the plaintiff and the defendant as per the sale deed.

2. The respondent herein filed the said suit for declaration that he has got easementary rights over the suit passage measuring 3' width. According to the petitioner-defendant, he is the exclusive owner of the suit passage. During the pendency of the suit, after some evidence was recorded, the petitioner-defendant filed I.A.No.7 for appointment of the Court Commissioner. The Court below has rejected the said application.

3. It is seen from the order passed by the court below that there is no dispute regarding the measurement of the properties purchased by

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the plaintiff and also the measurement of the properties purchased by the defendant. The dispute is only regarding the possession of the property of the defendant and whether the plaintiff has got easementary right over the suit passage?

4. Both the parties have adduced evidence in support of their case.

5. The plaintiff had filed similar application in the suit which was opposed by the petitioner-defendant and the said application was dismissed by the court. Thereafter, the petitioner filed the present application I.A.No.7 which has been dismissed by the court below. The court has held that the measurement of the property of the defendant is not necessary at this stage and hence, the appointment of the Commissioner is not necessary.

6. The order passed by the court below, in the circumstances, is just and proper and it

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does not call for any interference by this court and the petition filed by the Petitioner is liable to be dismissed and accordingly, it is dismissed.

Sd/-
JUDGE

KBN/-